IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 595 OF 2005

IN

EXECUTION APPLICATION NO. 197 OF 2004

IN

ARBITRATION MATTER NO. 2 OF 2001

The National Small Industries Corporation Ltd. .. .. Claimants.

Versus

M/s. Kamal Traders & Ors. . .....Respondents.

A N D

Mahesh V. Badlani. .. .. Applicant.

Mr. A. H. Mody with Ms. Usha Tiwari for the Claimants.

Mr. Sharan Jagtiani with Mr. Mahesh Shukla i/by M/s.Desai & Diwanji for Applicant.

CORAM : A. M. KHANWILKAR, J.

DATED : JULY 26, 2005.

P.C.:

Heard learned Counsel for the parties. Perused the pleadings and the accompanying documents.

2. It is evident from the documents placed on record at the instance of the Applicant that the Applicant purchased the suit flat No. 1202 situated at 12th Floor, Sangeet Sarita Apartment, Bhulabhai Desai Road, Mumbai-400 026. The Agreement for Sale has been executed on 9th September, 1980 in respect of the subject flat in favour of the Applicant. The Applicant is the original member of the Society Sangeet Sarita Co-operative Housing Society Limited. The name of the Applicant appears as sole shareholder of the shares of the said Society. Consequently, the flat in question has been allotted to the Applicant. The letters issued by the Society establish the position that the Applicant has been member of the Society since 1983 and in fact he is the signatory to the bye-laws which has been approved by the Registrar, his signature is appearing at serial No.21 of the bye-laws. If it is so, it necessarily follows that the Applicant is the owner and occupier of the subject flat. That flat can not, therefore, be attached in execution of the Award passed against the Respondents, in particular Respondent No.6, who incidentally happens to be the brother of the Applicant. The Respondent No.6 has no share in the subject flat and has therefore no concern thereto, for which reason the

Award passed against him cannot be executed against the Applicant.

3. The only objection taken on behalf of the Judgment Creditors is that the Applicant is a fictitious person. That objection can be straight away answered with reference to the power of attorney executed by the Applicant in the presence of Notary Public, Hong Kong as well as the Consulate General of India in Hong Kong.

4. The other objection taken on behalf of the Judgment Creditors is that the Agreement for Sale would indicate that the amount was paid in the name of the Applicant on behalf of M/s. Kamal Traders. This argument was advanced relying on the clause 18 of the Agreement for Sale relied upon by the Applicant. That clause however, is for the limited purpose of providing address on which all notices or communication should be addressed to the Applicant. The Applicant has furnished address of Kamal Traders for that purpose that does not mean the subject flat belongs to Kamal Traders, who incidentally happens to be the Judgment Debtor No.1.

5. Taking over all view of the matter, I have no hesitation in allowing the Chamber Summons in terms of prayer clause (a). Order accordingly.

6. All consequential steps taken on the basis of Warrant of Attachment dated 22nd February, 2005 in respect of the subject flat will have to be ignored.

7. Leave to amend to give correct date of warrant of attachment in the Chamber Summons is granted. Amendment allowed to be carried out within two weeks.

8. No order as to costs.

Sd/-

(A. M. KHANWILKAR,J.)